

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE:	)	
	)	
EASTERN LIVESTOCK CO., LLC	)	CASE NO. 10-93904-BHL-11
	)	
Debtor.	)	

**DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND  
STATEMENT OF ISSUES TO BE PRESENTED**

Superior Livestock Auction, Inc., by counsel, pursuant to Fed. R. Bankr. P. 8006, hereby submits the following Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented.

**I. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

- A. The following items filed publically in this case and appearing on the ECF system should be included in the record on appeal:

Filing Date	Docket No.	Docket Text
Dec. 6, 2010	1	Involuntary Petition
Dec. 7, 2010	27	Emergency Motion under 11 U.S.C. §§ 303(f) and (g), 105 and 1104(a) for an Order Appointing an Interim Trustee and Authorizing and Directing Interim Trustee to Operate Debtor's Business
Dec. 7, 2010	28	Minute Entry/Order
Dec. 13, 2010	68	Minute Entry/Order
Dec. 16, 2010	77	Order Approving Motion for the Appointment of a Trustee Under 11 U.S.C. §§ 105, 303 and 1104
Dec. 23, 2010	98	Notice of Appointment and Application for Order Approving Appointment of Trustee
Dec. 23, 2010	98-1	Trustee's Verified Statement and Notice of Acceptance

Dec. 23, 2010	98-2	Affidavit of Disinterestedness [of James A. Knauer]
Dec. 27, 2010	102	Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee
Dec. 30, 2010	113	Application to Employ Baker & Daniels LLP as Counsel to Chapter 11 Trustee
Dec. 30, 2010	114	Affidavit of Terry E. Hall in Support of Application to Employ Baker & Daniels LLP as Counsel to Chapter 11 Trustee
January 10, 2011	181	Objection of the First Bank and Trust Company to Application to Employ Baker & Daniels LLP as Counsel to Chapter XI Trustee
January 18, 2011	219	Application to Employ Hoover Hull LLP as Special Counsel to Chapter 11 Trustee
January 18, 2011	219-1	Affidavit of John David Hoover in Support of Application to Employ Hoover Hull LLP as Special Counsel to Chapter 11 Trustee
January 24, 2011	235	Amended Affidavit of Terry E. Hall in Support of Application to Employ Baker & Daniels LLP as Counsel to Chapter 11 Trustee
January 27, 2011	241	The First Bank and Trust Company's Withdrawal of Objection to Employment of Baker & Daniels LLP as Counsel to Chapter 11 Trustee
March 8, 2011	313	Schedule "F"
March 11, 2011	383	Minute Entry/Order
April 29, 2011	Claim 177-1	Claim filed by Superior Livestock Auction, Inc.
June 24, 2011	573	Minute Entry/Order
June 5, 2012	1166	Report of the Trustee, James A. Knauer Regarding Investigation and Analysis of Potential Claims Against Fifth Third Bank

June 8, 2012	1177	Preliminary Objection to Report of the Trustee, James A. Knauer Regarding Investigation and Analysis of Potential Claims Against Fifth Third Bank
June 22, 2012	1206	Supplemental Objection to Report of the Trustee, James A. Knauer Regarding Investigation and Analysis of Potential Claims Against Fifth Third Bank
July 10, 2012	1237	Motion to Remove Trustee
July 10, 2012	1238	Renewal of Objection of First Bank and Trust Company to Application to Employ Baker & Daniels LLP (nka Faegre Baker Daniels LLP) as Counsel to Chapter 11 Trustee
July 10, 2012	1239	Motion of the First Bank and Trust Company to Remove Trustee Pursuant to 11 U.S.C. § 324
July 18, 2012	1248	Joint Evidentiary Submission of Certain Creditors in Support of Motions to Remove Trustee and Renewal of Objection to Application to Employ Trustee Counsel
July 23, 2012	1255	Trustee's Chapter 11 Plan of Liquidation
July 23, 2012	1256	Disclosure Statement for Trustee's Chapter 11 Plan of Liquidation
August 13, 2012	1326	Trustee's Response to Objections to and Motions to Strike the Trustee's Report
August 13, 2012	1327	Response to Renewal of Objection of First Bank to Application to Employ Baker & Daniels LLP (NKA Faegre Baker Daniels LLP) as Counsel to the Trustee and the Bluegrass Joinder Thereto
August 13, 2012	1328	Affidavit of James M. Carr as Supplemental Rule 2014 Disclosure
August 13, 2012	1329	Trustee's Response to Motions to Remove Trustee

August 13, 2012	1330	Affidavit of James A. Knauer, Trustee as Supplemental Rule 2014 Disclosure
August 13, 2012	1331	Notice of Filing of Document Under Seal
August 14, 2012	1333	Trustee's Motion for Leave to File Document Under Seal [Participation Agreement]
August 16, 2012	1348	Reply by Superior Livestock Auction, Inc. to Trustee's Response to Objections and Motions to Strike the Trustee's Report
August 23, 2012	1377	Joinder in Motions by Superior Livestock Auction, Inc.
August 31, 2012	1388	Order Denying Motions to Remove Trustee
August 31, 2012	1399	Order Overruling Renewed Objections to Employment of Faegre Baker Daniels LLP
August 31, 2012	1390	Order on Objections to and Motions to Strike Trustee's Report
September 7, 2012	1408	Notice of Appeal

- B. The following items filed publically in Lauth Investment Properties, LLC, Case No. 09-06065-BHL-11 and appearing on the ECF system in that case should be included in the record on appeal:

<b>Filing Date</b>	<b>Docket No.</b>	<b>Docket Text</b>
August 3, 2009	328	Appearance filed by James A. Knauer on behalf of Creditor Wells Fargo Bank, N.A

- C. The following items filed in this case and NOT appearing on the ECF system should be included in the record on appeal:

Participation Agreement By And Between Wells Fargo Business Credit, Inc. and Fifth Third Bank, NA. (Dated as of February 9, 2005), Production Nos. FT028176-200, filed under seal on or about August 13, 2012 by the Trustee as reflected by Doc. 1331; and

Transcript of Omnibus Hearing on August 20, 2012 filed by J & J Court Reporters, Inc. on or about September 11, 2012 as reflected by Doc. 1411.

Transcript of Deposition of James Knauer, Volumes I and II, and all Exhibits thereto delivered to the Court at the August 20, 2012 hearing.

## **II. STATEMENT OF THE ISSUES**

A. Did the Court incorrectly determine the Trustee is “distinterested” within the meaning of 11 U.S.C. §§ 101(14) and 701 where:

- (i) The Trustee, as a lawyer, was actively representing Wells Fargo Bank, N.A. (“Wells Fargo”) with regard to its 144 million claims in Matter of Lauth, Case No. 09-06065-BHL-11 pending in the U.S. Bankruptcy Court, Southern District of Indiana;
- (ii) Another Wells Fargo affiliate owns a \$10 million participation interest in a \$32.5 secured million loan made to the Debtor in the case where the Trustee is serving;
- (iii) The Trustee obtained a written conflict waiver letter from “Wells Fargo & Co.” soon after his appointment as Trustee, but intentionally made no disclosure of the waiver or his representation of Wells Fargo;
- (iv) The Trustee retained counsel who also (1) represented Wells Fargo entities; (2) obtained a waiver for the present case; and (3) made no disclosure of its connection to Wells Fargo.

B. Pursuant to Fed. R. Bankr. P. 2007.1, is a trustee or prospective trustee required to disclose his concurrent lawyer-client relationship with a bank whose affiliate owns a \$10,000,000.00 undivided fractional interest and participation interest in a loan from debtor’s principal secured lender to the debtor?

C. Did the Court erroneously determine that under the loan Participation Agreement in this case, “the Trustee could not bring any action against the Participant that would not as a threshold matter have to be brought first against [Fifth Third Bank]”?

D. Did the Court err as a matter of law in determining that a written conflict waiver letter in favor of Wells Fargo which stated the Trustee would abide by all Rules of Professional Conduct would not prohibit the Trustee from commencing an action against Wells Fargo?

E. Was it error for the Court to determine that Wells Fargo Bank became a “former client” of the Trustee and his law firm on June 30, 2011, when the only evidence on the issue is the Trustee’s Supplemental Affidavit filed August 13, 2012, which states that the representation did not end until April 17, 2012?

F. Was it error for the Court to determine, without supporting evidence, that removing the Trustee “would significantly delay the resolution of this case, entail massive administrative expenses . . . impair the ability of the Trustee to bring and prosecute recovery actions” and “significantly impair creditor recoveries”?

#### **CERTIFICATE OF SERVICE**

I hereby certify that on September 19, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system:

David L. Abt	davidabt@mwt.net
John W Ames	jwa@gdm.com, shm@gdm.com;tlm@gdm.com;rtrowbridge@kslaw.com
T. Kent Barber	kbarber@dlgfir.com, dlgecf@dlgfir.com;dlgecf@gmail.com
C. R. Bowles	crb@gdm.com, shm@gdm.com;lgw@gdm.com
Lisa Koch Bryant	courtmail@fbhlaw.net
James M. Carr	james.carr@bakerd.com, patricia.moffit@bakerd.com
John R. Carr	jrciii@acs-law.com, sfinnerty@acs-law.com
Deborah Caruso	dcaruso@dalee.com, lharves@dalee.com;mthomas@dalee.com

Bret S. Clement	bclement@acs-law.com, sfinnerty@acs-law.com
Jesse Cook-Dubin	jcookdubin@vorys.com, vdarmstrong@vorys.com
Kirk Crutcher	kcrutcher@mcs-law.com, jparsons@mcs-law.com;cmarshall@mcs-law.com
Dustin R. DeNeal	dustin.deneal@bakerd.com, patricia.moffit@bakerd.com
Laura Day DelCotto	ldelcotto@dlgfir.com, dlgecf@dlgfir.com;dlgecfs@gmail.com
David Alan Domina	dad@dominalaw.com, KKW@dominalaw.com;efiling@dominalaw.com
Daniel J. Donnellon	ddonnellon@ficlaw.com, knorwick@ficlaw.com
Robert Hughes Foree	robertforee@bellsouth.net
Sandra D. Freeburger	sfreeburger@dsf-atty.com, smattingly@dsf-atty.com
Terry E. Hall	terry.hall@bakerd.com, sharon.korn@bakerd.com
John Huffaker	john.huffaker@sprouselaw.com, lynn.acton@sprouselaw.com;rhonda.rogers@sprouselaw.com
James Bryan Johnston	bjtexas59@hotmail.com, bryan@ebs-law.net
Todd J. Johnston	tjohnston@mcjllp.com
Edward M King	tking@fbtlaw.com, dgioffre@fbtlaw.com
James A. Knauer	jak@kgrlaw.com, hns@kgrlaw.com
Theodore A	
Konstantinopoulos	ndohbky@jbandr.com
Randall D. LaTour	rdlatour@vorys.com, khedwards@vorys.com
David L. LeBas	dlebas@nmanhowell.com, koswald@nmanhowell.com
Elliott D. Levin	edl@rubin-levin.net
Kim Martin Lewis	kim.lewis@dinslaw.com, lisa.geeding@dinslaw.com;patrick.burns@dinslaw.com
Karen L. Lobring	lobring@msn.com

John Hunt Lovell	john@lovell-law.net, sabrina@lovell-law.net
John Frederick Massouh	john.massouh@sprouselaw.com
Kelly Greene McConnell	lisahughes@givenspursley.com
William Robert Meyer	rmeyer@stites.com
Allen Morris	amorris@stites.com, dgoodman@stites.com
Judy Hamilton Morse	judy.morse@crowedunlevy.com, ecf@crowedunlevy.com;donna.hinkle@crowedunlevy.com;karol.brown@crowedunlevy.com
Walter Scott Newbern	wsnewbern@msn.com
Matthew J. Ochs	matt.ochs@moyewwhite.com, kim.maynes@moyewwhite.com
Ross A. Plourde	ross.plourde@mcafeetaft.com, erin.clogston@mcafeetaft.com
Timothy T. Pridmore	tpridmore@mcjllp.com, lskibell@mcjllp.com
Jeffrey E. Ramsey	jramsey@hopperblackwell.com, mhaught@hopperblackwell.com
Mark A. Robinson	mrobinson@vhrlaw.com, dalbers@vhrlaw.com
Jeremy S Rogers	Jeremy.Rogers@dinslaw.com, joyce.jenkins@dinslaw.com
Ivana B. Shallcross	ibs@gdm.com
Robert K Stanley	robert.stanley@bakerd.com
Meredith R. Thomas	mthomas@daleeke.com, kmark@daleeke.com
John M. Thompson	john.thompson@crowedunlevy.com, jody.moore@crowedunlevy.com,donna.hinkle@crowedunlevy.com
U.S. Trustee	ustpreion10.in.ecf@usdoj.gov
Stephen A. Weigand	sweigand@ficlaw.com
Charles R. Wharton	Charles.R.Wharton@usdoj.gov, Charles.R.Wharton@usdoj.gov
Jessica E. Yates	jyates@swlaw.com, edufficy@swlaw.com
James T. Young	james@rubin-levin.net, ATTY_JTY@trustesolutions.com;kim@rubin-

levin.net;lemerson@rubin-levin.net

I further certify that on September 19, 2012 a copy of the foregoing was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

National Cattlemen's Beef Association  
c/o Alice Devine  
6031 SW 37th St.  
Topeka, KA 66610

/s/ Christopher M. Trapp

Christopher M. Trapp